

U.S. DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
FILED

NOV 27 2013

CLERK, U.S. DISTRICT COURT
By _____
Deputy

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION**

ALAINA M. ADAMS-LYONS,
Plaintiff,

VS.

CAROLYN W. COLVIN,
Acting Commissioner of Social Security,
Defendant.

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CIVIL ACTION NO. 4:13-CV-653-O

**FINDINGS, CONCLUSIONS, AND RECOMMENDATION REGARDING
DEFENDANT'S MOTION TO DISMISS**

Pending before the Court is Defendant's Motion to Dismiss [doc. # 18], filed October 29, 2013. In her motion, Defendant requests that the Court dismiss the above-styled and numbered cause pursuant to Federal Rule of Civil Procedure 12(b)(1) because the Court lacks subject-matter jurisdiction to hear the case. (Defendant's Motion to Dismiss ("Def.'s Mot.") at 1.) According to Defendant, the Appeals Council denied Plaintiff Alaina Adams-Lyons ("Adams-Lyons") request for review on May 31, 2013. Because Adams-Lyons did not commence the instant civil action within 60 days of receipt of the Appeals Council's notice of denial, Defendants argues that the Court lacks subject-matter jurisdiction to hear the case.¹ (Def.'s Mot. at 2.) Having carefully considered the Defendant's motion, and noting that Adams-Lyons wholly failed to file a response, the undersigned recommends that the Court grant Defendant's motion for the reasons stated therein.

¹ 42 U.S.C. § 405(g) governs the federal courts' jurisdiction to review the Commissioner's decisions regarding disability benefits, and provides that "[a]ny individual, after any final decision of the Commissioner . . . made after a hearing to which he was a party, irrespective of the amount in controversy, may obtain a review of such decision by a civil action commenced within sixty days after the mailing to him of notice of such decision or within such further time as the Commissioner of Social Security may allow." 42 U.S.C. § 405(g); see 20 C.F.R. 404.981 ("You may file an action in a Federal district court within 60 days after the date you receive notice of the Appeals Council's action."); 20 C.F.R. § 404.901 ("Date you receive notice means 5 days after the date on the notice, unless you show us that you did not receive it within the 5-day period."); 20 C.F.R. § 422.210.

**NOTICE OF RIGHT TO OBJECT TO PROPOSED
FINDINGS, CONCLUSIONS AND RECOMMENDATION
AND CONSEQUENCES OF FAILURE TO OBJECT**

Under 28 U.S.C. § 636(b)(1), each party to this action has the right to serve and file specific written objections in the United States District Court to the United States Magistrate Judge's proposed findings, conclusions and recommendation within fourteen (14) days after the party has been served with a copy of this document. The United States District Judge need only make a *de novo* determination of those portions of the United States Magistrate Judge's proposed findings, conclusions and recommendation to which specific objection is timely made. *See* 28 U.S.C. § 636(b)(1). Failure to file, by the date stated above, a specific written objection to a proposed factual finding or legal conclusion will bar a party, except upon grounds of plain error or manifest injustice, from attacking on appeal any such proposed factual findings and legal conclusions accepted by the United States District Judge. *See Douglass v. United Servs. Auto Ass'n*, 79 F.3d 1415, 1428–29 (5th Cir. 1996) (en banc).

ORDER

Under 28 U.S.C. § 636, it is hereby **ORDERED** that each party is granted until **December 11, 2013**, to serve and file written objections to the United States Magistrate Judge's proposed findings, conclusions and recommendation. It is further **ORDERED** that if objections are filed and the opposing party chooses to file a response, the response shall be filed within seven (7) days of the filing date of the objections.

It is further **ORDERED** that the above-styled and numbered action, previously referred to the United States Magistrate Judge for findings, conclusions and recommendation, be and hereby is returned to the docket of the United States District Judge.

SIGNED November 27, 2013.



JEFFREY L. CURETON
UNITED STATES MAGISTRATE JUDGE

JLC/knv